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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/734,587

12/15/2003

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07/10/2008

EXAMINER

KUMAR, RAKESH

ART UNIT

PAPER NUMBER

3651

MAIL DATE

DELIVERY MODE

07/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/734,587	Applicant(s) EVANS ET AL.	
	Examiner RAKESH KUMAR	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 15-17 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 15, 16 and 20 is/are rejected.
- 7) ☒ Claim(s) 4-10 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 60/433,006.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

In view of the appeal brief filed on 03/05/2008, PROSECUTION IS HEREBY REOPENED. New grounds of rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Gene Crawford/

Supervisory Patent Examiner, Art Unit 3651.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "a lever" as recited in

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claim 1,15 and 16 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Referring to claims 1,3-14. Claim 1 recites the limitations "an extension connected to a lever" on line 2. It is unclear as to which element of the applicants drawings is depicted as the lever. No element in the elected set of the applicant's drawings (Figure 1-3D) is disclosed as a lever. Claim 1 is indefinite for failing to particularly point out and distinctly claim the subject matter of invention. As best understood the "lever" is construed to be any portion of the extension. Appropriate action is required.

Referring to claim 2. Claim 2 recites the limitations "the cover is the lever" on line 1. Claim 1 recites the cover and the lever as different elements of the invention. It is unclear as to how the two separately disclosed elements are same element. Appropriate action is required.

Referring to claim 15. Claim 15 recites the limitations "the tip" in line 5. There is insufficient antecedent basis for this limitation in the claim. It is unclear whether the "the tip" recited on line 5 is the same element as a "tip of an extension" recited in line 3. Appropriate action is required.

Referring to claims 15-17. Claim 15 recites the limitations "a lever" in line 4 and "the lever" line 7. However no element in the applicant drawings is disclosed as a lever.

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Claim 15 is indefinite for failing to particularly point out and distinctly claim the subject matter of invention. Appropriate action is required.

Referring to claim 15. Claim 15 recites the limitations "the side" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,15,15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Leopoldi (US 4,071,165).

Referring to claim 1. Leopoldi discloses a sheet dispenser (Figure 1) wherein the sheet dispenser comprises a container (a container comprising sides 14,15,16 and floor 11; See Figure 1) for holding at least one movable sheet (12), a cover (17) connected (by means of member 18) to the container, an extension (22) connected to a lever (22) and extending into the container (Figure 4), a tip of the extension (lower end of the member 22 where member 29 is attached) having a friction surface (29) for engaging the at least one sheet (12) within the container (Figure 4) whereby moving the cover (17) moves the tip of the extension (lower portion of member 22) in the container and slides the at least one movable sheet (12) outward from the container (Figure 4).

Regarding claim 2. Leopoldi discloses an article dispenser (Figure 1) wherein the cover (17) is the lever and is pivoted on a hinge (18) connected to the container (a container comprising sides 14,15,16 and floor 11; See Figure 1).

Regarding claim 3. Leopoldi discloses an article dispenser (Figure 1) wherein the extension (22) extends in a direction from the hinge (18) opposite a direction of the lever (see direction of member 19 and member 22).

Regarding claims 15 and 20. Leopoldi discloses a method of dispensing a strip (Figure 1), comprising providing a container (a container comprising sides 14,15,16 and floor 11; See Figure 1) and a dispensing opening (front portion of container) in the container, placing at least one strip (12) in the container, engaging the at least one strip (12) with a friction surface (29) on a tip of an extension (lower end of the member 22 where member 29 is attached) extending into the container, moving a lever (22) connected to the container, opening the dispensing opening, moving the extension (22) and the tip (lower end of the member 22 where member 29 is attached) in the direction of the dispensing opening (Figure 4), and moving the at least one strip (12) toward the dispensing opening and exposing the at least one strip (12) through the opening, grasping and removing the exposed strip, moving the lever (22) and the extension (22) in an opposite direction and sliding the side of the tip opposite the friction surface over the at least one strip and closing the dispensing opening.

Regarding claim 16. Leopoldi discloses a method wherein initiating of the moving of the lever (extension 22; see above) moves the tip (22) of the extension inward (into the container) in the container and toward the at least one strip (12), and wherein completing the moving of the lever (22) and extension in the opposite direction moves the tip of the extension (lower end of the member 22 where member 29 is attached) away from a next adjacent at least one strip (12).

Allowable Subject Matter

Claims 4-10 and 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Response to Arguments

Applicant's arguments, see Appeal Brief, filed 03/05/2008, with respect to 1-10, 15-17 and 20 have been fully considered and are persuasive. The rejections of claims 1-10, 15-17 and 20 have been withdrawn.

However, in further examination of the secondary reference of Leopoldi and considering the previous applicant arguments pertaining to the dispenser of Leopoldi as not being a container, upon further consideration by the Office the dispenser of Leopoldi

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is a container designed to house a stack of sheets. By definition as stated in the *Webster's Dictionary* the definition for a container is as follows: *a thing that contains or can contain something*. In this particular case the dispenser of Leopoldi contains a stack of sheets thus it is a container. Thus, as a result the secondary reference of Leopoldi is used as primary reference in this present action.

Furthermore, it is in the view of the Office the claim limitations reciting the element "a lever" in claims 1 and 15 is not disclosed in the applicant's drawings 1-3D. Thus the element must be shown or the feature(s) canceled from the claim(s). Furthermore, the recited limitations of "a tip of the extension" and "a tip" are used interchangeable lacking antecedent basis. See modified rejections above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAKESH KUMAR whose telephone number is (571)272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gene Crawford/
Supervisory Patent Examiner, Art
Unit 3651

/Rakesh Kumar/
Examiner, Art Unit 3651